

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Zachary Herman	Team: Squad #12	CCRB Case #: 202004222	<input checked="" type="checkbox"/> Force	<input type="checkbox"/> Discourt.	<input checked="" type="checkbox"/> U.S.
			<input type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Tuesday, 06/02/2020 8:18 PM, Friday, 09/18/2020 , Wednesday, 10/07/2020	Location of Incident: West Street near the intersection of Morris Street; 100 Church Street	Precinct: 01	18 Mo. SOL 12/2/2021	EO SOL 5/4/2022	
Date/Time CV Reported Thu, 06/11/2020 7:22 PM	CV Reported At: CCRB	How CV Reported: On-line website	Date/Time Received at CCRB Thu, 06/11/2020 7:22 PM		

Complainant/Victim	Type	Home Address

Witness(es)	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. POM Christophe Boria	26858	953693	SRG 4
2. SGT Daniel Nicoletti	05379	942271	GVSD Z1

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. POM Jonathan Ku	20058	951890	SRG 4
2. DT3 Mike Civil	02114	935092	GVSD Z1
3. LCD William Buchanan	00000	924993	GVSD Z1
4. POM Scott Obenauer	23942	935422	SRG 4
5. POM Edward Mendez	00689	933017	SRG 1
6. POM Michael Rivera	26688	948413	SRG 2
7. SGT Catherine Kunst	01788	943284	SRG 4
8. POM Patrick Connolly	12224	930038	SRG 3
9. POM Rafael Morla	13749	956114	SRG 3
10. POM Carl Becker	11065	954539	SRG 3
11. SGT Benjamin Nelson	4010	947818	GVSD Z1

Officer(s)	Allegation	Investigator Recommendation
A.SGT Daniel Nicoletti	Force: On June 2, 2020, West Street near the intersection of Morris Street in Manhattan, Sergeant Daniel Nicoletti struck § 87(2)(b) with a baton.	
§ 87(4-b), § 87(2)(g)		
§ 87(4-b), § 87(2)(g)		
D.POM Christophe Boria	Untruthful Stmt.: On September 18, 2020, at 100 Church Street in Manhattan, Police Officer Christophe Boria provided a false official statement to the CCRB.	

Officer(s)	Allegation	Investigator Recommendation
E.SGT Daniel Nicoletti	Untruthful Stmt.: On October 7, 2020, at 100 Church Street in Manhattan, Sergeant Daniel Nicoletti provided a misleading official statement to the CCRB.	

Case Summary

On June 11, 2020, § 87(2)(b) filed this complaint via the CCRB website.

On June 2, 2020, at approximately 8:18 p.m., a large protest occurred in the vicinity of West Street and Morris Street in Manhattan. A city-wide curfew was in effect starting at 8:00 p.m. Hundreds of civilians and at least 50 police officers were present for this protest, which police officers dispersed. In the course of dispersing the protest, PO Christopher Boria of SRG4 arrested § 87(2)(b). As PO Boria placed § 87(2)(b) in restraints, Sergeant Daniel Nicoletti struck § 87(2)(b) with a baton (**Allegation A – Force: Nightstick a club, § 87(2)(g)**). § 87(2)(b) was issued a summons for violating the curfew.

§ 87(4-b), § 87(2)(g)

On September 18, 2020, Police Officer Christophe Boria provided a false official statement to the CCRB (**Allegation D – Untruthful Statement: False Official Statement**). On October 7, 2020, Sgt. Nicoletti provided a false official statement to the CCRB (**Allegation D – Untruthful Statement: Misleading Official Statement**).

The CCRB received BWC footage from the NYPD's Legal Bureau relating to this case (BR22-27) and it was reviewed (BR07) as well as from § 87(2)(b) (BR17-21, summarized BR05). The investigation also linked BWC footage provided to the CCRB regarding Case No. 202004048 (BR29-76, summaries attached to BR96) and Case No. 202003978 (BR77-84, summaries attached to BR95).

Findings and Recommendations

Allegation (A) Force: On June 2, 2020, at West Street near the intersection of Morris Street in Manhattan, Sergeant Daniel Nicoletti struck § 87(2)(b) with a baton.

On the night of June 2, 2020, a curfew was in effect in New York City beginning at 8:00PM.

§ 87(2)(b) in her statement to the CCRB (BR08), stated that on June 2, 2020, at approximately 8:18PM, she heard noise from her open, westward facing window. She turned towards it. She observed a protest on the street below, involving civilians on foot and carrying and riding bicycles. Below the window § 87(2)(b) she did not know who was later identified by the investigation as § 87(2)(b). § 87(2)(b) was face down on the ground; she did not see how he came to be on the ground. An officer identified by the investigation as PO Boria was kneeling beside § 87(2)(b) and holding his left arm, while an officer knelt near § 87(2)(b) holding his right arm. § 87(2)(b)'s hands were pinned by his sides, where the officers were holding them. § 87(2)(b)'s hands were not in restraints. § 87(2)(b)'s body was wiggling slightly but § 87(2)(b) could not tell if § 87(2)(b) was moving on his own or if the officers were moving § 87(2)(b). An officer identified by the investigation as Sgt. Nicoletti walked north within a few feet of where the officers held § 87(2)(b) to the ground. As Sgt. Nicoletti walked by where officers held § 87(2)(b) to the ground, he turned towards § 87(2)(b) raised his nightstick to shoulder height, and struck § 87(2)(b) in the calves with his nightstick, once. Other protestors were in the vicinity but did not appear to be within five feet of where officers held § 87(2)(b) on the ground. There were more officers in the area than protestors. No protestors moving by were interacting with the officers who were holding § 87(2)(b). After Sgt. Nicoletti struck § 87(2)(b) the two officers holding § 87(2)(b) appeared to gesture towards

something and Sgt. Nicoletti continued moving north with them. Within a few seconds the officers restrained § 87(2)(b)'s hands in plastic zip ties. § 87(2)(b) stopped watching what was happening with § 87(2)(b) at this point (BR08). § 87(2)(b) provided testimony to the CCRB that was consistent with that of § 87(2)(b) (BR16).

The investigation was unable to reach § 87(2)(b) despite making five calls and sending two letters to two possible addresses for § 87(2)(b).

§ 87(2)(b) provided the investigation with video footage she recorded that captured the incident (BR20, summarized BR05). § 87(2)(b) recorded this video on her cell phone, facing down from her apartment window. At 00m17s into the video § 87(2)(b) identified by the investigation as § 87(2)(b) wearing grey pants, black boots, and a dark long sleeve top can be seen on the ground near the center of the frame. Two officers, one of which the investigation identified to be PO Boria, are kneeling next to § 87(2)(b). Sgt. Nicoletti, identified by the investigation, is standing near § 87(2)(b)'s feet. At 00m018s, a white male officer with brown hair wearing a short-sleeve white shirt and no helmet is seen walking away from § 87(2)(b) and proceeding north on West Street. Sgt. Nicoletti is wearing a short-sleeve uniform shirt with chevrons at his biceps, and black gloves. § 87(2)(b) is laying on the ground, face toward the ground, with his left side elevated and his right arm under his torso. Eight other officers are within a radius of approximately five yards, but not interacting with § 87(2)(b) or the officers interacting with § 87(2)(b). These officers are walking away from the interaction. At approximately 00m18s into the video, Sgt. Nicoletti raises a black baton in his right hand above his head and strikes § 87(2)(b) across the back of the legs on or near the calf with the baton once. § 87(2)(b) lifts his lower legs, curling them towards his back. As he does so, his body rolls or is rolled so that it is facing the ground and the torso is flat to the pavement. It is unclear in the footage whether the officers kneeling on the right and left of § 87(2)(b) observe Sgt. Nicoletti's action. The officers to § 87(2)(b)'s left and right bring § 87(2)(b)'s hands together and one of the officers uses white plastic zip ties to restrain § 87(2)(b)'s hands. In the lane of traffic to the left of § 87(2)(b) is a white Access-A-Ride van with blue insignia.

The investigation located video evidence that depicted § 87(2)(b)'s interaction with officers.

- PO Ku's BWC was obtained in connection with CCRB 202003978 (BR91, summarized BR07). In this video, officers are depicted walking north towards protesters on West Street as the protesters walk west away from the officers. At approximately, 00m50s, officers begin to arrest protesters. At 00m59s in the recording, there is a black male depicted at the center of the screen who is walking backwards, away from officers. The black male – who the investigation identified as § 87(2)(b) – has short locks and is wearing a dark blue jacket, and grey trousers. At 01m04s, a white male officer with a short-sleeve white shirt, brown hair, and no helmet is depicted. This officer was identified by the investigation as Lieutenant William Buchanan as per his NYPD Officer Photograph (BR110). At 01m06s, officers including Lieutenant Buchanan are depicted running in front of PO Ku towards § 87(2)(b) and other protesters in his immediate vicinity. Visible at this time in the lane of traffic to the left of § 87(2)(b) and the officers is a white Access-A-Ride van with blue insignia. At 01m12s, officers begin to apprehend protesters. At the same time, numerous officers surround § 87(2)(b). Although the officers' exact actions are obscured by the fact that their bodies are turned away from the cameras and the presence of numerous officers whose bodies block the camera's view of § 87(2)(b) it appears that the officers make physical contact with § 87(2)(b). At 1m13s, an unidentified officer raises his baton and swings it below his knees towards § 87(2)(b). It is unclear due to the positioning of officers immediately around § 87(2)(b) whether § 87(2)(b) is on the ground at the time the baton moves towards him. At the conclusion of this action, § 87(2)(b) is depicted on the ground. It is not clear if or where the baton makes contact with § 87(2)(b). This unidentified officer is

wearing a short-sleeve uniform shirt with no chevrons depicted on the right biceps of the shirt, and is not wearing gloves. Lt. Buchanan stands behind the group of officers observing. PO Ku continues walking forward past this group of officers.

- Lieutenant Peter Sotiriou's BWC was reviewed (BR63). At approximately 03m27s, an officer is depicted holding § 87(2)(b) by the arm. A screenshot of this image is attached in BR98. § 87(2)(b)'s hair is worn with short locks. The Access-A-Ride van is depicted in the background when Lieutenant Sotiriou turns towards the street at approximately 04m15s in the recording.

The investigation also obtained video of Sgt. Nicoletti at the protest in the immediate vicinity of where the incident occurred:

- The investigation reviewed video footage from § 87(2)(b) provided to the CCRB in connection with CCRB 202003978 (BR93). This footage depicts officers walking towards protestors who are walking north on West Street. Lieutenant Buchanan is depicted at 00m20s walking north on West Street, away from the white Access-a-Ride van. Sgt. Nicoletti is depicted at 00m56s, with his name plate and shield number visible. Sgt. Nicoletti is depicted wearing black gloves, a short-sleeved NYPD uniform shirt with chevrons on the left and right biceps of the shirt, and a helmet.

Sgt. Nicoletti testified that he responded to the incident location with members of his team. On scene, Sgt. Nicoletti's team and other officers deployed south of where protestors congregated. Sgt. Nicoletti's direct supervisor on scene, Lieutenant William Buchanan, instructed him to disperse the crowd. Sgt. Nicoletti's duties for the day involved preventing protestors from entering the Battery Tunnel. Sgt. Nicoletti and his team walked up the West Side Highway [also known as West Street] towards protestors and gave verbal instructions to leave the area. The demeanor of the crowd started to change, and became aggressive and "hectic." Protestors threw bottles, bikes, and barricades at police officers, and made verbal threats that he could not recall. Sgt. Nicoletti did not recall specifically how he went about dispersing the crowd but believed he would have given verbal orders to disperse and walked forward toward protestors. Sgt. Nicoletti believed he had his baton in his hands at this time, but did not recall how specifically he held it, speculating that he would have held it with two hands in front of himself, or pointed tip downward in one hand by his side. Sgt. Nicoletti did not recall if he pushed anyone forward or struck anyone with a baton while trying to disperse the crowd. He did not recall if he observed other officers strike individuals with their batons. As he moved, Sgt. Nicoletti walked behind Lieutenant Buchanan. The situation ended when the streets were empty and the crowd dispersed. Although other officers from Sgt. Nicoletti's team made arrests, Sgt. Nicoletti never debriefed with anyone about the protest and was never given information about the arrest of § 87(2)(b). During his CCRB interview, Sgt. Nicoletti was shown a still frame from cell phone footage generated by Brian Derrick (BR93). Sgt. Nicoletti identified himself in the video. Sgt. Nicoletti was shown § 87(2)(b) video footage. Although Sgt. Nicoletti said the setting was the one he recalled, he stated that the video did not independently refresh his memory. Sgt. Nicoletti stated that he could not identify any of the officers in the frame, including the sergeant in black gloves striking § 87(2)(b). Sgt. Nicoletti could not recall if he struck a protester in the legs as depicted in the video. He did not recall if he saw another officer do so, or if another officer described such a situation to him. (BR14).

In his CCRB statement, Sgt. Nicoletti stated that he was not equipped with a BWC on the date of incident.

In his testimony to the CCRB, PO Boria explained that he detained § 87(2)(b) and issued him a summons for failing to disperse. On the scene of the protests, PO Boria walked about thirty feet and grabbed § 87(2)(b) whom he described as a 5'8" black male with a slim build and medium-length

black hair who was dressed in a dark t-shirt that was possibly maroon. PO Boria told § 87(2)(b) that he was under arrest and should get on the ground. § 87(2)(b) got on the ground. Nothing else beyond § 87(2)(b) moving his own body occurred during the process of § 87(2)(b) getting on the ground. PO Boria did not use a forcible take down to bring § 87(2)(b) to the ground because § 87(2)(b) got on the ground when PO Boria asked him to do so. No other officer performed a forcible take down on § 87(2)(b) and PO Boria and § 87(2)(b) interacted one-on-one. PO Boria handcuffed § 87(2)(b) with zip-ties PO Boria had with him. § 87(2)(b) was not fighting PO Boria during the handcuffing process. PO Boria recalled many other people around him when he arrested § 87(2)(b) and people asking if PO Boria was “good,” but no other officers assisting him in placing § 87(2)(b) under arrest as § 87(2)(b) was not being combative and was acting passively. PO Boria did not see any officer strike § 87(2)(b) with a baton. He did not see any officer swinging a baton in a one-handed strike against § 87(2)(b)'s body (BR13).

PO Boria's Memo Book (BR109) notes that § 87(2)(b) was taken into custody at the West Side Highway and Morris Street, and that he was issued a summons for violating Mayor's Executive Order 118 regarding a curfew.

§ 87(2)(b) was issued a summons, but was not arrested on scene, so no arrest report was generated. No TRI was generated regarding § 87(2)(b)'s arrest.

The investigation determined that Sgt. Nicoletti was the subject of the complaint due to his physical and temporal proximity to the area where § 87(2)(b) was apprehended and the similarity of his appearance to the subject officer as depicted in the video. Sgt. Nicoletti's physical and temporal proximity was determined by multiple sources of video evidence, which showed that he walked past the location of § 87(2)(b)'s apprehension within seconds of the apprehension. In his statement to the CCRB, Sgt. Nicoletti stated that he was in the immediate vicinity of Lieutenant Buchanan as he walked on West Street. Video evidence placed Lieutenant Buchanan as being present for § 87(2)(b)'s apprehension, and confirmed that Sgt. Nicoletti walked a few seconds behind Lieutenant Buchanan. While there were several officers depicted in the video footage, Sgt. Nicoletti's appearance stood out in that he was dressed in a short-sleeve shirt, had chevrons on the biceps of his shirt, and had black gloves. § 87(2)(g)

NYPD Patrol Guide 221-01 governs NYPD use of force. Officers may use force to protect themselves and/or other people from harm, as well as to overcome resistance to take a suspect into custody. This use of force must be reasonable, and must take into consider the following factors when using force: The nature and severity of the crime/circumstances, the actions taken by the subject [of the force], the duration of the action, the immediacy of the perceived threat or harm to the subject, members of the service, and/or bystanders, whether the subject is actively resisting custody, whether the subject is attempting to evade arrest by flight, the number of subjects in comparison to the number of members of service, the size, age, and condition of the subject in comparison to the members of service, the subject's violent history, if known, the presence of a hostile crowd or agitators, whether the subject was under the influence of any substance which would affect pain tolerance (BR94).

According to Patrol Guide 221-03, using an impact weapon constitutes a, “Level 2,” use of force. Per this procedure, a TRI must be generated for all Level 2+ uses of force.

§ 87(2)(g)

§ 87(2)(g)

§ 87(4-b), § 87(2)(g)

§ 87(4-b), § 87(2)(g)

Allegation (D) Untruthful Statement: On September 18, 2020, at 100 Church Street in Manhattan, Police Officer Christophe Boria provided a false official statement to the CCRB.

On September 18, 2020, PO Boria provided a statement to the CCRB. PO Boria recalled numerous details of the apprehension of § 87(2)(b) and informed the CCRB that he interacted one-on-one with § 87(2)(b) that while officers asked if he was okay as he placed § 87(2)(b) in handcuffs, no one assisted him in this process. PO Boria also stated that he did not see any officer strike § 87(2)(b) with a baton. He noted minor details such as placing § 87(2)(b) in ziptie handcuffs and later replacing these with traditional handcuffs and the names of other officers that were present as he waited to process § 87(2)(b)'s summons.

During the interview, at 36:30 minutes in the recording, PO Boria was shown the video provided by § 87(2)(b) (Board Review 20). PO Boria stated that he was unsure whether he could identify himself in the frame, but believed that he was one of the depicted officers and stated that the depicted location was consistent with the location of his interaction with § 87(2)(b). PO Boria affirmed that the video depicted an officer swing a baton at § 87(2)(b) but he stated that he did not recall seeing something of that nature on June 2, 2020. PO Boria did not alter his testimony after viewing the video footage despite being given an opportunity to do so.

As discussed under Allegation A, the investigation determined that the person being apprehended in the video provided by § 87(2)(b) was § 87(2)(b). The investigation also determined that video provided by § 87(2)(b) depicts at least one officer assisting PO Boria in the process of handcuffing § 87(2)(b) as he lay on the ground. It is unclear from § 87(2)(b)'s video whether PO Boria witnessed Sgt. Nicoletti strike § 87(2)(b) with his baton.

According to Patrol Guide Procedure 203-08 (BR111), a false official statement is an intentional statement that a member of the service knows to be untrue, which is material to the outcome of an investigation, proceeding, or other matter in connection with which the statement was made.

The Patrol Guide further defines a material fact as a significant fact that a reasonable person would recognize as relevant to, or affecting, the subject matter of the issue at hand, including any foreseeable consequences, or establishment of the elements of some proscribed conduct. It is a fact that is essential to the determination of the issue and the suppression, omission, or alteration of such a fact would reasonably result in a different decision or outcome. A material

fact may be distinguished from an insignificant, trivial, or unimportant detail.

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

Allegation (E) Untruthful Statement: On October 7, 2020, at 100 Church Street in Manhattan, Sergeant Daniel Nicoletti provided a misleading official statement to the CCRB.

Sgt. Nicoletti provided the CCRB with a statement on October 7, 2020. In his statement to the CCRB, Sgt. Nicoletti stated that he did not recall if he struck anyone with a baton as he and other officers dispersed the crowd. During the interview, Sgt. Nicoletti viewed PO Ku's BWC footage (BR91), which depicted him shortly after force was used against § 87(2)(b) and he was able to identify himself in the footage. Sgt. Nicoletti was also shown the footage provided to the investigation by § 87(2)(b) at 44 minutes into the recording (Board Review 20). While Sgt. Nicoletti stated that the setting was familiar, he stated that he could not identify any officer in the frame, including the white male officer wearing black gloves and a short-sleeve shirt with chevrons on the biceps of the shirt. Sgt. Nicoletti stated that he did not recall striking anyone with his baton, and stated that his recollection of whether he struck anyone with a baton was not refreshed after seeing the footage provided by § 87(2)(b).

As discussed in Allegation A, the investigation determined that Sgt. Nicoletti used his baton to strike § 87(2)(b) as depicted in the video provided by § 87(2)(b).

Patrol Guide Procedure 203-08 (BR111) defines a misleading statement as a statement that is intended to misdirect the finder, and materially alter the narrative by:

- a. Intentionally omitting a material fact or facts,
- b. Making repeated claims of "I do not remember" or "I do not know" when a reasonable person under similar circumstances would recall, or have been aware of, such material facts, or
- c. Altering and/or changing a member's prior statement or account when a member of the service is confronted with independent evidence indicating that an event did occur as initially described, will generally be considered a misleading statement

In his statement to the CCRB, Sgt. Nicoletti stated that he did not recall striking anyone with his baton, and further noted that his recollection of whether he performed this action was not refreshed by viewing the video that depicted him striking § 87(2)(b) with a baton. § 87(2)(g)

§ 87(2)(g)
[Redacted]
[Redacted]

§ 87(2)(g)
[Redacted]
[Redacted]
[Redacted]
[Redacted]

§ 87(2)(g)
[Redacted]
[Redacted]

Civilian and Officer CCRB Histories

- This is the first CCRB complaint to which § 87(2)(b) has been a party (BR02).
- This is the first CCRB complaint to which § 87(2)(b) has been a party (BR01).
- Sgt. Nicoletti has been a member-of-service for 14 years and has been the subject of eight CCRB complaints and 21 allegations, none of which were substantiated. § 87(2)(g)
[Redacted]
- PO Boria has been a member-of-service for eight years and has been the subject of three CCRB complaints and three allegations, none of which have been substantiated. § 87(2)(g)
[Redacted]

Mediation, Civil and Criminal Histories

- This case was ineligible for mediation.
- According to the Office of Court Administration (OCA), § 87(2)(b) has no history of convictions in New York City (BR04)
- According to OCA, § 87(2)(b) has no history of convictions in New York City (BR04).
- The charges generated regarding this case were dismissed or otherwise not prosecuted by the New York City District Attorney (BR04).
- As of February 12, 2021, the New York City Office of the Comptroller has no record of any notice of claim being filed in regards to this complaint (BR03).

Squad No.: 12

Investigator: Zachary Herman Investigator Zachary Herman 05/12/2021
Signature Print Title & Name Date

Squad Leader: Carlmais Johnson IM Carlmais Johnson June 24, 2021
Signature Print Title & Name Date

Reviewer: _____

CCRB Case # 202004222

Signature

Print Title & Name

Date